

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

GORDON MAYS, JR.,

Petitioner,

v.

CIVIL ACTION NO. 1:16CV138
CRIMINAL ACTION NO. 1:11CR96

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 8]

On June 27, 2016, the pro se petitioner, Gordon Mays, Jr. ("Mays") filed a petition pursuant to 28 U.S.C. § 2255, relying on Johnson v. United States, 135 S. Ct. 2551 (2015), in which the Supreme Court of the United States held that the residual clause of the Armed Career Criminal Act was unconstitutionally vague (dkt. no. 1). The Court referred the petition to United States Magistrate Judge James E. Seibert for initial screening and a Report and Recommendation ("R&R") in accordance with LR PL P 2.

On July 8, 2016, Magistrate Judge Seibert issued his R&R, in which he concluded that the petition should be denied and dismissed with prejudice because Mays was not sentenced as a career offender or as an Armed Career Criminal and his argument relying on Johnson therefore was without merit (dkt. no. 8).

The R&R also warned Mays that his failure to object to the recommendation within 14 days would result in the waiver of any appellate rights he might otherwise have on this issue. Id. at 6.

Mays did not file a timely objection. On September 15, 2016, however, Mays filed a motion requesting an extension to file an objection to the R&R (dkt. no. 11), which the Court granted on September 23, 2016, establishing a new deadline of October 25, 2016 (dkt. no. 12). To date, Mays has not filed any objections to the R&R.¹

On February 6, 2017, over three months beyond the deadline to file any objections, Mays filed a motion to stay the proceedings pending resolution of Beckles v. United States (dkt. no. 14), which was decided shortly thereafter on March 6, 2017. 137 S.Ct. 886 (2017). Presciently, Magistrate Judge Seibert's R&R had already informed Mays that, because he was not sentenced as a career offender, any pending decision in Beckles, which related solely to the constitutionality of the career offender guideline, would be without merit (dkt. no. 8).

Consequently, finding no clear error, the Court **ADOPTS** the R&R in its entirety (dkt. no. 8), **DENIES** the motion to stay (dkt. no. 14), **DENIES** and **DISMISSES WITH PREJUDICE** Mays's petition (dkt. no.

¹The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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1), and **ORDERS** that this case be stricken from the Court's active docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of this order to counsel of record and to the pro se petitioner, certified mail, return receipt requested.

Dated: May 31, 2017.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE